

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1947 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

MOHAN LALA

Appearance:

MR DD VYAS for Petitioners

MRS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. This petition is filed by the petitioners under Article 227 of the Constitution of India for issuance of a writ of certiorari or any other appropriate writ, order or direction of the like nature quashing and setting

aside the consolidated Award passed by the ld. Presiding Officer of the Labour Court, Surendranagar in Reference (LCS) No.233 and 239 of 1990 and for other consequential reliefs.

2(i). According to the petitioners, two industrial disputes, one by respondent nos. 1 to 9 and another by respondent nos. 10 & 11, were raised by the workmen contending that they were working with petitioner no.2 Sub Division at Limbdi since number of years and were discharged from service without following due process of law prescribed under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the "I.D. Act") with effect from 15.8.1989 & 11.8.1989 respectively.

(ii) According to the petitioners, disputes raised by the workmen were ultimately referred to the Labour Court, Surendranagar by the Asstt. Labour Commissioner, Surendranagar vide order dated 3.4.1990 which came to be registered as Reference (LCS) Nos. 233 and 239 of 1990. At the conclusion of the proceedings, Presiding Officer of the Labour Court allowed both the references vide consolidated Award dated 12.12.1991 and directed the petitioners to reinstate the respondents workmen in service with continuity of service and 60% back wages. Labour Court also awarded costs of Rs.50/ (Rs. fifty only) to each workmen. Feeling aggrieved by the consolidated award dated 12.12.1991 passed by the Presiding Officer of the Labour Court, Surendranagar, this petition is filed by the petitioners.

3. The main contention of the petitioners is that all the respondents were daily wagers and they were engaged in doing repair work on the road purely on an adhoc basis and, therefore, in view of the amended definition of sec. 2(oo)(bb) of the I.D. Act, no protection can be given to the respondents and hence, the impugned award ought not to have been passed by the Presiding Officer.

4. Considering the submissions made by the ld. counsel appearing for the parties and on careful consideration of the impugned award at Annex.A, in my view, the finding recorded by the ld. Presiding Officer of the Labour Court, Surendranagar qua reinstatement of the respondents workmen is absolutely legal, proper and in accordance with law and does not require any interference. Hence, the finding qua reinstatement is hereby confirmed.

5. My attention has been drawn by ld. counsel Ms.

D.T.Shah for the respondents workmen to various judgment of this Court. By pointing out relevant part of the decision of this Court in Spl. Civil Application No.1933/91 dated 30.9.1992 (Coram: S.B.Majmudar, J as he then was), ld. counsel Ms. D.T.Shah has submitted that this Court has reinstated daily wagers on nominal muster roll employee on the same terms and conditions considering the set of facts available before the Court. According to Ms. Shah, in the case on hand, there is clear violation of sec.25(g) & (h) of ID Act. However, during the course submissions, ld. counsel Mr. Panchal appearing for the petitioners has stated that so far as reinstatement order of the Labour Court is concerned, Panchayat has complied with that part of order.Ld. Counsel Ms. D.T.Shah has rightly pointed out that while dealing with the petition under Article 227 of the Constitution, dispute as to backwages should not be decided. She, however, on instructions from the respondents, has submitted that on the facts and circumstances of the case, respondents would be satisfied if back wages is reduced to 30% in respect of each workmen instead of 60% back wages as awarded by the Labour Court, to which ld. counsel Mr. Panchal has no ground to resist as the impugned award qua reinstatement is confirmed by this Court.

6. Under the circumstances, this petition is partly allowed. Impugned consolidated Award dated 12.12.1991 passed by ld. Presiding Officer of the Labour Court, Surendranagar in Reference (LCS) Nos. 233 & 139 of 1990, in so far as reinstatement of the respondents workmen is concerned, is hereby confirmed. So far as impugned order regarding payment of back wages at the rate of 60% is concerned, the same is modified to the extent that petitioners shall pay back wages to the respondents workmen at the rate of 30%. Ld. Counsel Mr. Panchal has submitted that in compliance with the order of this Court, Panchayat has deposited 20% amount of back wages amount before the Labour Court, Surendranagar. Hence, petitioners are directed to deposit remaining amount of back wages along with the amount of costs at the rate of Rs.50/ to each workmen as ordered, before the Labour Court, Surendranagar, within 8 (eight) weeks from the date of receipt of writ. On such amount being deposited by the petitioners, Labour Court, Surendranagar is directed to disburse the same to the respondents workmen at the earliest.

7. Petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

16.02.2001 [C.K. BUCH, J]

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